

Disability and Health and Safety

A guide for UNISON safety reps

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Introduction

There are over 11 million people in the UK with a limiting long term illness, impairment or disability according to the latest Labour Force Survey. 5.7 million of these are of working age - almost 20% of the UK's working age population.

This document is aimed primarily at safety and workplace equality reps. The term workplace equality rep refers to a specific role within some branches, however sometimes branches have equality co-ordinators and/or self-organised group representatives who can also undertake representation. The term safety rep refers to trade union safety representatives. However the document may also be of interest to stewards who cover workplace health and safety.

UNISON believes that disabled people should receive equal treatment at work, and that includes issues regarding their health and safety. Employers must make necessary reasonable adjustments to ensure disabled people can work safely, and health and safety should not be used as an excuse for not employing disabled people. In addition a workplace that is accessible and safe for disabled people is also safer and more accessible for all employees, clients and visitors. Legislation and standards should be used to facilitate the employment of disabled people, not exclude them.

UNISON has a solid history of campaigning against discriminatory action and in favour of improved working conditions for disabled workers. It works to challenge discriminatory behaviour and prejudiced attitudes from employers, and is committed to ensuring that disabled workers are treated fairly, with respect and dignity.

Health and safety has a strong role to play in ensuring fairness and the early prevention of new or aggravated health conditions for all workers, including disabled people. Reps should use both equality and health and safety legislation, in order to negotiate the best, and safest, working conditions possible.

This guide provides guidance on the

- Role of safety reps (including how they can work with workplace equality reps)
- Most important and relevant legislation including guidance on reasonable adjustments
- Health and safety issues faced by disabled workers and advice on how these can be resolved.

The roles of safety and workplace equality reps.

Being a trade union health and safety representative (hereafter referred to as safety rep) is a statutory role and as such has certain mandatory legal rights or functions including:

- representing members
- carrying out workplace health and safety inspections
- investigating potential hazards, complaints, and incidents
- attending joint health and safety committees
- paid time off to carry out their role.

They also have the right to be consulted on any matter relating to the health, safety, or welfare of their members (See Appendix for more details).

Workplace equality reps are elected by UNISON members in their workplace to provide advice and support on equality and discrimination issues. This involves talking to members to ensure that they are being treated fairly, and to managers to ensure they are implementing the organisation's equality policies, and that these policies comply with equality law (see below). Workplace equality reps are able to access a greater volume of information that may affect disabled workers, such as discrimination and harassment. To learn more about these issues please go to the UNISON website (see Appendix).

Campaigning and organising

By working together safety and workplace equality reps can combine their knowledge and skills to ensure that the union can continue to campaign and organise around disability and health and safety issues, and that members remain safe and are treated equally. They also provide a substantial knowledge base on health and safety and equality legislation which is invaluable for both members and employers.

Guide to useful legislation

Health and safety legislation

As the HSE says “health and safety legislation should not prevent disabled people finding or staying in employment and should not be used as a false excuse to justify discriminating against disabled people”.

The main umbrella Act for UK health and safety legislation is the Health and Safety at Work Act (HSWA) Act 1974. This sets out the employer's obligation to keep employees, and any members of the public (who use their premises), healthy and safe. It also includes a general duty for employers to consult with their employees. Although European legislation has added to these requirements, this Act still sets out the basic principles on which all other regulations are based.

Two of the most important of these regulations are:

- Management of Health and Safety at Work Regulations (MHSWR) 1999
- The Safety Representatives and Safety Committees (SRSC) Regulations 1977.

The MHSWR sets out the employer's duty to carry out suitable and sufficient risk assessments. The SRSC tells employers that they must, where there is a recognised trade union, consult with workers on all matters regarding their health and safety.

Further information on HSWA, MHSWR, and SRSC can be found in the UNISON “Six Pack” guide available from the UNISON online catalogue (See Appendix).

Risk assessment and workplace inspections

Although there is not a requirement for an employer to carry out a specific, separate, risk assessment for a disabled person, the HSE advises that where an employer becomes aware of a worker's disability, they may need to review their assessments and consider whether any additional control measures are required.

Although it is not the duty of safety reps to carry out the assessment they do have the right to be consulted on who carries it out, and of any changes that affect the health and safety of their members. In addition they have the right to carry out workplace inspections.

It is important that safety reps and workplace equality reps work together to identify hazards affecting disabled workers, and to campaign for/ suggest the measures that are required to control them. Safety reps will have the health and safety knowledge, but workplace equality reps may have a better understanding of the needs and concerns of disabled workers.

If any health safety issues regarding disabled workers are discovered it is important both work collaboratively to ensure the employer does everything that is reasonably practicable to support these workers. Health and safety must not be used as an excuse to unfairly discriminate against them.

For more information on risk assessments and workplace inspections please see the Appendix.

The Equality Act 2010

The Equality Act 2010 was created to be a comprehensive, single piece of legislation that would set out protections for all groups. Under this act a disabled person is defined as any person who has a physical or mental impairment that causes a substantial and long-term adverse effect on their ability to carry out their normal day-to-day activities. In addition people with cancer, AIDS/HIV or multiple sclerosis are automatically regarded as disabled. The act defines three basic forms of disability discrimination.

- Direct discrimination is less favourable treatment on the grounds of disability compared to someone without that disability where other circumstances are comparable
- Indirect discrimination through a provision or criterion or practice applied to everyone, but which puts people with a disability at a particular disadvantage
- Treating a disabled person unfavourably because of something arising from, as opposed to because of, their disability.

With the latter two forms of discrimination (“indirect” and “arising from”) the employer may avoid a claim of discrimination if the treatment can be objectively justified as a proportionate means of achieving a legitimate aim. This defence does not apply to cases of direct discrimination.

Reasonable adjustments

Employers’ duty to make reasonable adjustments

This duty is at the heart of employers’ duties with regard to the Equality Act, and also by implication their duty to provide a safe working environment. Employers have a duty to do everything that is reasonably practicable to keep all their workers safe from harm, and this includes disabled workers.

Very often the employer would need to consider a combination of these adjustments.

What is considered reasonable?

This is a frequent question from safety reps. Unfortunately there is not always a straightforward answer and it will depend on a consideration of all of the following factors:

- whether they are effective
- whether they are practical
- what they cost
- the resources, type and size of the employer
- the availability to the employer of financial or other assistance to help make an adjustment, eg advice from Access to Work.

A good starting point is to ask whether the adjustments succeed in remedying the barrier, enabling the disabled worker to do the job. If they do, there is a good chance they would be considered reasonable.

Issues regarding costs and resources are much less likely to be a consideration for larger employers, than smaller ones. This is because it is the resources of the whole organisation that is taken into account, not just the individual department. Where the organisation is small the availability of financial support from agencies, such as the Access to Work Scheme, will need to be taken into account.

To get a fuller understanding of the Equality Act and the duty to make reasonable adjustments, please

read the UNISON Guide “Proving disability and reasonable adjustments” (see Appendix).

Examples of reasonable adjustments and good practice

Below are some of the reasonable adjustments employers may need to consider in order to ensure that disabled workers can perform their duties without risking either their health or safety. As explained above not all of these would be considered reasonable for every employer. However every employer is obliged to demonstrate they have investigated what might work. Any adjustments should be discussed and agreed with the individual in question.

Accessibility

The needs of disabled workers should be considered at the design and planning stage, rather than waiting for disabled workers to raise them (see also section on evacuation procedures). This will create a more inclusive environment, and save the employer money as well. Adjustments that should be considered include:

- ramps to building
- dropping of kerbs
- lift access (with appropriate talking indicators/ Braille signage)
- doors and corridors wide enough for wheelchairs
- keeping floors clear of trip hazards and clutter, particularly the spaces around desks and storage areas
- ensuring surfaces are even
- tethering and concealing telephone wires and electric cables
- accessible well sign-posted toilets
- automated doors
- car parking
- access areas for guide or working dogs.

Working environment

- adjustments to the premises - lifts, lighting and light switches, steps etched in light paint or with tactile warning strips, non-slip even flooring, audio warning alarms, automatic opening doors, door handles, entry devices both reachable by wheelchair and locatable by the visually impaired
- relocation of the worker to more suitable premises, for example relocation of the worker to the ground floor
- adjustments to the workstation - Braille keyboards, hands-free phones, voice recognition software, zoom text, text-phone¹, especially designed/adjustable chairs and desks.

Signposting

- signs highlighting the best routes for disabled people
- use of contrasting colours or textures in furniture, carpets, walls, doorways
- notices in large clear print
- Braille signage
- signs provided with matte finish to avoid reflections.
- communication
- health and safety information provided in accessible formats, ie easy-read, large font, Braille, audio formats
- consultation with all disabled workers, through their safety and equality reps, on proposed changes to the workplace.

¹ A hard-of hearing person taps out their message on a textphone and the text is then read aloud by the operator to a hearing person.

Work organisation

- re-allocation of duties within the same post
- transfer to a more suitable post
- adjustments to working hours, for example to avoid rush hour
- working from home.

Rehabilitation

- phased return
- reduced hours
- time off for treatment
- time off for rehabilitation/disability leave (see section on sickness absence and disability below)

News starters/appointments/transfers

- facilitating visits by new starters/promotions/transfers (who have a disability) to their new workplaces so that adjustments can be made ahead of time.

The “Public Sector Equality Duty”

It is important to know that this is part of the Equality Act and applies to all public sector bodies plus those that carry out what are known as “public functions”. This duty (which still applies when the functions have been contracted out and privatised) places an obligation on all such bodies to proactively eliminate discrimination and promote equality. Therefore under this duty it could be appropriate for a branch to request a review of policies and procedures that impact on disabled workers.

Consulting workers

Wherever UNISON is recognised, employers must consult UNISON’s safety reps on any changes to the workplace that could affect the health and safety of its members. Not only is this a legal requirement, it is also in the employer’s best interest to take advantage of their inside knowledge of the workplace. It is also important that UNISON’s equality reps, with their knowledge of equality and disability issues, are involved in any such discussions and decisions. Again this is not only to the advantage of UNISON members, but also to employers in ensuring they comply with their equality duties.

Evacuation procedures

In addition to considering reasonable adjustments regarding access to and from their buildings, under the fire safety regulations employers must ensure that all people, including disabled people, can leave the building safely in the event of a fire. This includes considering whether staff or visitors require a personal emergency evacuation plan (PEEP). This plan, which must be tailored to their individual needs, is likely to give detailed information on their movements during an escape, named support and, in some cases, building adaptation.

Employers need to consider the following:

- evacuation routes that take account of those who move at slower speeds
- fire evacuation lifts
- safe areas and meeting points/refuge areas
- training, ie ensuring fire officers and evacuation assistants receive training in:
 - evacuation techniques (all staff should be trained in the basic evacuation procedures)
 - use of, and assisting individuals with, mobility equipment and aids
 - instructions for individuals who use assistance animals
 - how best, in an emergency, to communicate with those who have a disability (eg sign language).

- emergency procedures and backup in case of break-down of motorised wheelchairs/scooters
- encouraging employees, in case of an emergency, to keep a list of critical medications, life-threatening allergies, special equipment, names and addresses and contact details of doctors, pharmacies, family members and friends. A copy could then be sealed in an envelope and given to their manager or trusted colleague, and only opened in an emergency
- buddy system where someone else agrees to assist the disabled person to evacuate the building. It is important that “buddies” get the training required to enable them to safely perform their role.

A PEEP must be reviewed regularly as situations or levels of disability may change.

Sickness absence and disability

The starting point for unions is that it is a reasonable adjustment for the employer to count disability related absence separately from sickness absence. However every year many disabled people whose impairment requires them to take time off work, find themselves dismissed through sickness absence procedures that make no allowance for disability-related absence.

Although it is not necessarily illegal to sack someone whose absence is due to disability related ill health, employers are required to justify such a dismissal, and demonstrate they have considered all reasonable adjustments. These should include a good disability leave policy. The EHRC Code of Practice can be cited in support of such adjustments, although they would be still be subjected to the conditions given above.

Guidance on sickness absence management including time off for treatment and rehabilitation can be found in the UNISON Guide “Making sickness absence policies work better for us”. A model disability leave agreement is also available on the UNISON website (See Appendix).

Below is a case study of a worker in the housing sector who was diagnosed with cancer. It demonstrates that good management policies and procedures are not only critical for supporting staff through their illness but also can bring long term benefits to the organisation as skills, experience and loyalty are retained.

"I started to pass blood in 2006 but despite being tested in 2006 and 2007, it was not until 2008 that I was finally diagnosed with bladder cancer.

"Following this diagnosis I had my first bout of surgery within 10 weeks, the aim of which was to remove all the cancerous cells from my bladder.

"I then had to undergo a sustained period of treatment that involved 60 bouts of treatment over five years (12 per year). Each treatment consisted of having the TB Virus injected into my bladder, in order to kill off any remaining cancer cells. Obviously having such a dangerous virus injected into me meant that I was a potential health hazard to anyone who shared a toilet with me. This meant that for each treatment I had to have at least two days off work, and of course I had to make special arrangements at home to protect my family.

"As well as time off for the treatment I required, I also had to adjust my hours and duties. Meetings had to be moved, or in some cases colleagues would have to stand in for me. Sometimes I would work fewer hours one week, and then try and make it up at a future date.

"The thing about cancer is that the journey from diagnosis, to treatment and its conclusion, is unpredictable. For example six months after the first bout of surgery I was told the cancer cells had grown back, and I had to undergo further surgery. This meant my employer had to have contingencies in place, both in terms of providing cover for me when I was off work, and in giving me the support I needed.

"Having cancer is psychologically draining. When I was initially diagnosed I posed the question I expect every cancer sufferer does, "why me?" I admit I had periods of depression. In total my employer made arrangements for me to have six counselling sessions. However as I said the "journey" is unpredictable, and in the event I only required three, however it is possible (depending on events and support networks, both inside and outside work) that I would have required more.

"I am grateful for the support I received from my employer, my colleagues and the union. However I don't see myself as the beneficiary of charity. Of course, as a cancer sufferer, under the Equality Act my employer was legally obliged to consider the adjustments that would be considered reasonable. In addition the truth is I was, and am, good at my job. I had over 20 years experience of working in the housing sector, from helping and supporting tenants, to debt collection, and it would have cost my employer a lot of money to replace me.

"It was two years from my initial symptoms to diagnosis and during that time my illness would not have been considered covered under the Equality Act. During that time I was taking more time off work and had the support of my employer. Employers need to be wary about dashing to use costly capability procedures even when an illness is not covered by the Equality Act. By doing so they could lose a valued employee. What is important is that they are talking to the individual and their union reps, to find out what is wrong and what can be done to support the worker concerned.

"Finally I am a survivor and can, hopefully, expect a reasonable life span. However not every cancer sufferer is so lucky. In these cases there is a lot the employer, their union and colleagues, can still do. Remember they still have a life to live even if it is a shorter one than they would like. In some cases this could involve facilitating them in getting quick and early access to their pension and other benefits, so they use it to enjoy what life they have remaining. However it may also involve helping them, if that is their choice, to continue working. Remember work is, in many cases, an important part of what a person is and of being alive".

The “Fit Note” and the “Fit for Work” Service

When a worker has been off for more than seven consecutive days (this includes non-working days) they must provide their employer with a doctor's “fit note”. The GP will complete the “fit note” indicating via a system of tick boxes whether the worker:

1. Is “not fit for work”
2. “May be fit for work taking account of the following advice”.

This advice would include any adaptations an employer could make to the workplace that would help the worker in their return to work, and could include adaptations to their hours of work, duties or workplace. The employer is not required to agree to any of these changes, although if they don't this would mean the worker being considered unfit for work. These adaptations are not to be confused with the “reasonable adjustments” that an employer is required to make for a disabled worker. However the two could overlap, where the worker is disabled, and where the adaptations recommended under the Fit Note are the type of reasonable adjustments required to comply with equalities legislation.

The Fit for Work Service is a service aimed at workers who have been, or are expected to be, absent from work for four weeks or more. Referrals can be made, but only with the consent of the worker, by either the GP or the employer. It consists initially of a telephone based assessment, and in some cases a more thorough face-to-face follow up assessment through an occupational health professional, followed by a “Return to Work” plan, which would provide advice similar to the Fit Note (see above).

Although UNISON is in favour of any moves that support workers' rehabilitation after lengthy periods of absence, it does have concerns over the implementation of the service, in particular the decision to contract out the service to a private sector provider.

It is not compulsory for workers to participate in the service. However UNISON does advise members to consider, in consultation with their trade union rep, the implications of their decision with regard to support from their GP or employer. If the worker does agree to the referral it is important they are honest and constructive in their discussions. In the case of a disabled worker this would include discussing both any adaptations they need as part of their return to work, and the introduction of any new, or changes to any existing, reasonable adjustments that are required to counter their disabilities.

More information on both the Fit Note and Fit for Work Service can be found in the UNISON guide “Making sickness policies work better for us” (see Appendix).

Please note the above service is not to be confused with the Fit to Work test which is a Work Capability Assessment (WCA) designed to enable the Department of Work & Pensions (DWP) to determine whether disabled welfare claimants or those suffering from long-term illnesses are entitled to the main out-of-work sickness benefit, Employment and Support Allowance (ESA). UNISON has expressed its concern at the way this test is being applied and how it is used could deny people who are sick or disabled the financial support they need.

Bullying and harassment

Harassment is defined as unwanted conduct that has the purpose or effect of violating the dignity of people in the workplace or of creating an intimidating, hostile, degrading, humiliating or offensive environment. To meet the legal definition of harassment it must relate to one of the protected characteristics under the Equality Act. If it does not relate to one of these, it would be defined as bullying. Information on both bullying and harassment can be found on the UNISON website (see Appendix). For guidance specifically on tackling bullying in the workplace please read the UNISON guide “Tackling bullying at work” (see Appendix for details).

A case study involving harassment of a disabled person can be seen below.

Case study

A member who was an employee of an NHS trust, had a number of impairments, which were accepted as disabilities, and required medication to enable them to continue in their duties.

Our member attended a meeting with their manager, but was unable to contribute as they started to feel unwell. They saw their GP in the afternoon who confirmed that their symptoms were caused by their disability, not the medication they were taking.

Our member reported to work the next day and attended a team meeting with their line manager. The manager asked our member to stay behind after the meeting. Our member thought that the purpose of the chat was to discuss a piece of work but in fact it was for the purpose of discussing their health.

During the discussion, the line manager, referring to the meeting they had both attended the previous day, said that she felt the member had let her down, and that the member had appeared “doped” and “out of it”. She went on to say that the member’s health was beginning to raise capability issues, both in the short and long terms.

The case went to Tribunal which found that although the employer was justified in exploring the member’s ill health, the comment referring to the member as ‘doped’ amounted to an act of harassment (and an act of discrimination arising from disability). The comment was a superfluous and unnecessary personal remark, understandably taken as a slight.

“Access to Work”

“Access to Work” is a fund financed by the government to help those with a disability start, or stay in, work. Examples of what the money can be used for include:

- adaptations to the workplace, including special equipment
- support workers and services to help keep people in work
- cost of getting to work, if the worker can't use public transport (eg taxi fares).

Applying for a grant is a process that involves both the worker and their employer. Details of how to access it and what the money can be used for are available at the Access to Work website (see Appendix).

Safety rep checklist

- Has your employer carried out regular risk assessments to identify the support disabled workers may require?
- Does your employer's health and safety, including its absence, policies and procedures meet the requirements of both health and safety and equality legislation?
- Does the Public Sector Equality Duty apply to your employer, if yes are they compliant with it?
- Does your workplace meet the requirements for disabled workers?
- What reasonable adjustments have your employer made to meet the needs of disabled workers?
- Have you, or any other UNISON rep, been consulted on these?
- Are there any other reasonable adjustments they may need to consider?
- Have disabled members been referred to the "Fit for Work" Service, if yes have these discussions included any additional reasonable adjustments your employer may need to consider?
- Is your employer, and are your members, aware of the support the Access to Work Fund may provide?
- Have you discussed any of the above with UNISON's equality reps?

Appendix

UNISON web pages

Discrimination (including information on the Equality Act) (unison.org.uk/get-help/knowledge/discrimination/disability-discrimination/) This includes link to a model disability leave agreement.

Bullying and harassment (unison.org.uk/get-help/knowledge/discrimination/bullying-and-harassment/)

Publications available on the UNISON catalogue (unison.org.uk/online-catalogue)

- The Regulations, Codes of Practice and guidance relating to the Safety Representatives and Safety Committees Regulations (SRSC), 1977 (stock number 1819).
- Health and Safety: Organising for Health & Safety; a guide for UNISON safety reps (on their functions and rights and how to use them) (stock number 1684)
- The health and safety 'six pack' (stock no. 1660): includes information on:
 - Health and Safety at Work Act 1974
 - Management of Health and Safety at Work Regulations 1999
 - Provision and Use of Work Equipment Regulations 1998
 - Manual Handling Operations Regulations 1992
 - Workplace (Health, Safety and Welfare) Regulations 1992[
 - Personal Protective Equipment at Work Regulations 1992
 - Health and Safety (Display Screen Equipment) Regulations 1992

- Risk assessment: a guide for UNISON safety reps (stock number 1351)
- Health and safety inspections at work: Organising for health and safety: a guide for UNISON safety reps (stock number 1939)
- Making sickness absence policies work better for us (stock number 2594)
- Tackling bullying at work (stock number 1281)

Other UNISON publications

- Proving disability and reasonable adjustments: a guide to evidence under the Equality Act 2010 (accessed through the UNISON website unison.org.uk

Other websites and publications

Equality and Human Rights Commission (EHRC) equalityhumanrights.com/

- Equality Act 2010 Code of Practice and Employment Statutory Code of Practice

Department of Work and Pensions (DWP) gov.uk/government/organisations/department-for-work-pensions

- Fit for work: guidance for employees
- Fit for work: guidance for employees

Access to work gov.uk/access-to-work

Jobcentre Plus disability two ticks scheme civvystreet.org/employers/CivvyStreetEmployers/Resources/JobcentrePlusdisabilitytwoticksscheme.aspx)

Notes

Notes

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